

ADVANCE PAYMENTS

[CT (Nonprofit) CREI – 09/04] [FAR 52.232-12, - 05/01, Alt II – 05/01, Alt IV – 04/94, Alt V – 05/01]

- (a) Notwithstanding any provisions in the Article of this Subcontract entitled "Allowable Cost and Payment," to the contrary, advance payments will be made to the Subcontractor as stated herein.
- (b) General Requirements.
 - (1) Request for Advance Payment. Subject to the conditions hereinafter set forth, the Institute will make an advance payment, or advance payments from time to time, to the Subcontractor. No advance payment will be made:
 - (A) Without the approval of JPL as to the financial necessity therefore;
 - (B) In an amount which together with all advance payments theretofore made, shall exceed the amount stated in paragraph (4) below; and
 - (C) Without a properly certified invoice or invoices.
 - (2) Amount of Advance Payment.
 - (A) The Subcontractor shall determine the estimated amount of advance payment necessary to meet the requirements of paragraph (5) hereof entitled "Use of Funds" to cover performance of the Subcontract. This determination shall be pursuant to written instructions provided by JPL relative to the:
 - (i) Shortest practical period for which advance payments will be provided;
 - (ii) Format and frequency of requests for advance payments; and
 - (iii) Data required in support of each request.
 - (B) The estimate will be adjusted by the amount which actual cash expenditures for prior performance periods of the Subcontract exceeded or was less than the advance payments provided for such performance. The Subcontractor shall submit its estimate and supporting data in a "Statement of Subcontractor's Request for Advance Payment" to JPL in writing. The request must be submitted sufficiently early to permit review, approval and disbursement of the required advance payment by the time the funds are actually needed by the Subcontractor.
 - (3) Payment Method. Advance payments by check will be made in accordance with the provisions of paragraphs (B) and (C) below:
 - (A) JPL reserves the right to redetermine the payment method to be used. Upon such redetermination, JPL will unilaterally amend this Subcontract and notify the Subcontractor in writing 45 days prior to the effective date of the change in the method of payments.
 - (B) JPL will review the Subcontractor's advance payment requirements to determine the reasonableness thereof, and if JPL concurs, the "Statement of Subcontractor's Request for Advance Payment" and/or invoice will be approved for payment. If JPL determines that the advance payment requested by the Subcontractor is in excess of cash requirements for Subcontract performance during the specified period of time, JPL will approve a reduced amount. Upon such reduction, JPL will notify the Subcontractor of the amount requested, the amount approved, and the reasons for reduction.
 - (C) The Institute will issue a check to the Subcontractor for the amount authorized by JPL and mail such check to the Subcontractor in time to be received on or about the date the funds are required for Subcontract performance.
 - (4) Amount of Advance and Other Payments. In no instance will the total payments provided under the Subcontract as modified exceed the funds then allocated to the Subcontract and subject to the Articles of this Subcontract entitled "Limitation of Cost" or "Limitation of Funds," less any amount of withholding provided for by the Subcontract.
 - (5) Use of Funds. The Subcontractor may use advance payment funds only to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor, indirect costs, or such other costs approved in writing by JPL. Payments are subject to any restrictions in other Articles of this Subcontract. Determinations or whether costs are properly allocable, allowable, and reasonable shall be in accordance

with generally accepted accounting principles, subject to any applicable subparts of Part 31 of the Federal Acquisition Regulation, other applicable regulations referenced in Part 31, or subpart 1831.2.

- (6) Return of Funds. The Subcontractor may at any time repay all or any part of funds obtained by advance payments. When requested in writing by JPL, the Subcontractor shall repay to the Institute such amount of the balance of advance payments as JPL deems to be in excess of the Subcontractor's current needs.
- (7) Termination of Advance Payments. If the Subcontractor demonstrates an unwillingness or inability to establish procedures or follow the invoicing procedures provided in form JPL 2893, "Advance Payment Invoice Procedure - CREI Contracts," attached to this Subcontract, JPL may require immediate repayment to the Institute of the unliquidated balance of advance payments and unilaterally amend this Subcontract to prescribe an appropriate payment clause that will be applicable thereafter.
- (8) Liquidation. If, upon completion or termination of this Subcontract, all advance payments obtained by the Subcontractor have not been fully liquidated by authorized charges under the Subcontract, the unliquidated balance shall be deducted from any sums due to the Subcontractor from the Institute and any excess funds shall be repaid by the Subcontractor to the Institute upon demand.
- (9) Lien on Property Under Subcontract.
 - (A) Any and all advance payments made under this Subcontract shall be secured by a lien in favor of the Government, paramount to all other liens, upon the supplies or other things covered by this Subcontract and on all material and other property acquired for or allocated to the performance of this Subcontract, except to the extent that the Government by virtue of any other provision of this Subcontract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Subcontractor. The Subcontractor shall identify by marking or segregating all property which is subject to a lien in favor of the Government by virtue of any provision of this Subcontract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this Subcontract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this Subcontract on any mass of property with which such supplies, materials, or other property are commingled. The Subcontractor shall maintain adequate accounting control over such property on its books and records.
 - (B) If, at any time during the progress of the work on the Subcontract, it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Subcontractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt in duplicate, acknowledging the existence of such lien. A copy of each receipt shall be delivered by the Subcontractor to JPL. If this Subcontract is terminated in whole or in part and the Subcontractor is authorized to sell or retain termination inventory acquired for or allocated to this Subcontract, such sale or retention shall be made only if approved by JPL, which approval shall constitute a release of the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the Subcontractor's termination claim, is applied in reduction of advance payments then outstanding hereunder.
- (10) Default Provisions. If any of the events of default under paragraph (A) occurs, the Institute without limiting any rights that it may otherwise have, may, in its discretion and upon written notice to the Subcontractor, withhold further payments on this Subcontract.
 - (A) Events of default include:
 - (i) A finding by JPL that the Subcontractor:
 - a. Has failed to observe any of the covenants, conditions, or warranties of these provisions or has failed to comply with any material provision of this Subcontract;
 - b. Has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this Subcontract;
 - c. Has allocated inventory to this Subcontract substantially exceeding reasonable requirements;
or
 - d. Is delinquent in payment of taxes or of the costs of performance of this Subcontract in the ordinary course of business.

- (ii) Termination of this Subcontract by reason of fault of the Subcontractor; and
 - (iii) The commission of an act of bankruptcy (appointment of a trustee, receiver, or liquidator for all or a substantial part of the Subcontractor's property, or institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against the Subcontractor).
- (B) Upon the continuance of any such events of default for a period of 30 days after such written notice to the Subcontractor, the Institute may, in its discretion, take the following additional actions as it may deem appropriate under the circumstances:
 - (i) Charge interest on advance payments outstanding during the period of any such default at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 Stat. 97;
 - (ii) Demand immediate repayment of the unliquidated balance of advance payments hereunder; or
 - (iii) Take possession of and, with or without advertisement, sell at public sale at which the Government may be the purchaser, or at private sale, all or any part of the property on which the Government has a lien under this Subcontract and, after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of the unliquidated balance of advance payments hereunder and in reduction of any other claims of the Institute against the Subcontractor.
- (11) Prohibition Against Assignment. Notwithstanding any other provisions of this Subcontract, the Subcontractor shall not transfer, pledge, or otherwise assign this Subcontract or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution. This paragraph shall not be deemed to take effect (nor shall the specific amounts in paragraph (12) be determined) unless and until, with JPL First-Tier Subcontract Manager approval, an advance payment is taken for estimated costs for future work to be performed under this subcontract and such paragraph shall remain in effect only until that advance payment has been fully utilized for subcontract performance or refunded.
- (12) Information-Access to Records. The Subcontractor shall furnish to JPL such information concerning the financial operation of the Subcontractor's business as may be requested. The Subcontractor shall afford to JPL or its representative proper facilities for inspection of the Subcontractor's books, records and accounts, at all reasonable times until the expiration of three years from the date of final payment under this Subcontract. This paragraph shall not be deemed to take effect (nor shall the specific amounts in paragraph (12) be determined) unless and until, with JPL First-Tier Subcontract Manager approval, an advance payment is taken for estimated costs for future work to be performed under this subcontract and such paragraph shall remain in effect only until that advance payment has been fully utilized for subcontract performance or refunded.
- (13) Other Security. The terms of this Subcontract shall be considered adequate security for advance payments hereunder, except that if at any time JPL deems the security furnished by the Subcontractor to be inadequate, the Subcontractor shall furnish such additional security as may be satisfactory to JPL, to the extent that such additional security is available.
- (c) Method of Payment. JPL will make advance payments to the Subcontractor in accordance with the General Requirements set forth above and as herein detailed:
 - (1) Within 10 working days after receipt of a fully executed copy of the Subcontract or Subcontract Modification incorporating this Article, the Subcontractor shall prepare and submit to JPL, pursuant to paragraph (b)(2)(B) above, the original and three copies each of two separate invoices in a format to be provided by JPL for each of the first two advance payment periods. The first period is from the date of the Subcontract or Subcontract Modification incorporating this Article through the first full calendar month. The second period is for the second succeeding full calendar month. The Subcontractor shall forward to JPL not later than the twentieth day of the first full month, an invoice for the third period. Beginning with the invoice for the fourth period, to be submitted not later than the twentieth day of the second full month, and each month thereafter, the Subcontractor shall forward to JPL an original and three copies of an invoice along with a "Statement of Subcontractor's Request for Advance Payment," in accordance with paragraph (b)(2)(B) above, in a format to be provided by JPL in accordance with paragraph (b)(2)(A) above. The Subcontractor shall liquidate the first advance payment on the invoice for the fourth advance payment request, submitted not later than the twentieth day of the second full month, and shall continue to liquidate advances in sequence against each subsequent advance request. The Institute will issue a check in the amount approved by JPL, to be received by the Subcontractor not later than the first day of the month for which advance payment was requested, except for the final month or months of Subcontract performance during which time any advance payments,

then outstanding, will be liquidated. The Subcontractor shall continue to furnish to JPL each month a "Statement of Subcontractor's Request for Advance Payment," which will indicate the amount of Advance Payments being liquidated.

- (2) Within 10 working days after receipt of the Subcontractor's first and second period advance payment invoices, the Institute will make its best effort to forward a check to the Subcontractor in the JPL-approved amount for the first advance payment requested. The Institute will forward a check to the Subcontractor for the second period advance payment and each payment thereafter, in the JPL approved amount, so as to be received by the Subcontractor not later than the first day of the month, for which the advance payment is being made.